

## CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer BRIAN D. KENNELLY and GAVIN J. KENNELLY

Address P. O. Box 92, Hanalei, Kauai, Hawaii 96714

Project Name(\*): ANANALU

Address 6519 Anahulu Road, Hanalei, Kauai, Hawaii 96714

Registration No. 5962

Effective date: May 12, 2006

Expiration date: June 12, 2007

### Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

**Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.**

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

### Type of Report:

- ☐ **PRELIMINARY:**  
(yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.
- ☒ **FINAL:**  
(white) The developer has legally created a condominium and has filed complete information with the Commission.  
[X] No prior reports have been issued.  
[ ] This report supersedes all prior public reports.  
[ ] This report must be read together with \_\_\_\_\_
- ☐ **SUPPLEMENTARY:**  
(pink) This report updates information contained in the:  
[ ] Preliminary Public Report dated: \_\_\_\_\_  
[ ] Final Public Report dated: \_\_\_\_\_  
[ ] Supplementary Public Report dated: \_\_\_\_\_
- And  
[ ] Supersedes all prior public reports  
[ ] Must be read together with \_\_\_\_\_  
[ ] This report reactivates the \_\_\_\_\_  
public report(s) which expire on \_\_\_\_\_

(\*) Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request. FORM: RECO-30 286/986/189/1190/892/0197/0800/0203/0104

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

☐ Required and attached to this report

☒ Not Required - disclosure covered in this report.

**Summary of Changes from Earlier Public Reports:**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

☒ No prior reports have been issued by the developer.

☐ Changes made are as follows:

**SPECIAL NOTICE:**

THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING AN EXISTING RESIDENTIAL DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE ALSO IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. THE PURCHASER SHOULD CONSULT WITH THE APPROPRIATE COUNTY AGENCIES TO DETERMINE WHETHER THE PURCHASER MAY BUILD A RESIDENTIAL DWELLING UNIT, OR ANY OTHER TYPE OF STRUCTURE, UPON THE PROPERTY.

1. This Public Report does not constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it ensure that all county codes, ordinances and subdivisions requirements have necessarily been complied with.
2. This Project does not involve the sale of individual subdivided lots. The land area beneath and immediate adjacent to each unit as shown on the condominium map is designated as a limited common element and does not represent a legally subdivided lot. The dotted lines on the condominium map merely represent the approximate location of the limited common element assigned to each unit.
3. Facilities and improvements normally associated with County approved subdivisions may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior roads.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS FOR FURTHER INFORMATION REGARDING THE FORGOING.

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## **General Information on Condominiums**

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. The common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

## **Operation of the Condominium Project**

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary of the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in spirit of cooperation.

## I. PERSONS CONNECTED WITH THE PROJECT

Developer: Brian D. Kennelly and Gavin J. Kennelly Phone: (808) 826-4099  
Name\*  
P. O. Box 92  
Business Address  
Hanalei, Kauai, Hawaii 96714

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary)

Not Applicable

Real Estate Broker\*: Country Brokers, Ltd. Phone: (808) 826-4099  
Name  
P. O. Box 1468  
Business Address  
Hanalei, Kauai, Hawaii 96714  
(Business)

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 245-3381  
Name  
4200 Rice Street  
Business Address  
Lihue, Kauai, Hawaii 96746

General Contractor\*: Eugene Lopez, dba Phone: (808) 828-6855  
All Phase Construction  
Name  
P. O. Box 840  
Business Address  
Hanalei, Kauai, Hawaii 96714  
(Business)

Condominium Managing Agent\*: Self managed by the Association of Unit Owners Phone: \_\_\_\_\_  
Name  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

Attorney for Developer: Michael H. Sakai, Esq. Phone: (808) 531-4171  
Name  
201 Merchant Street, Suite 902  
Business Address  
Honolulu, Hawaii 96813-2929  
(Business)

\* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

## II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

☐ Proposed

☒ Recorded - Bureau of Conveyances: Document No. 2006-044624  
Book \_\_\_\_\_ Page \_\_\_\_\_

☐ Filed - Land Court: Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

- B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

☐ Proposed

☒ Recorded - Bureau of Conveyances, Condo Map No. 4187

☐ Filed - Land Court Condo Map No. \_\_\_\_\_

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

- C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other manners which affect how the condominium project will be governed.

The Bylaws for this condominium re:

☐ Proposed

☒ Recorded - Bureau of Conveyances: Document No. 2006-044625  
Book \_\_\_\_\_ Page \_\_\_\_\_

☐ Filed - Land Court: Document No. \_\_\_\_\_

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

- D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

☐ Proposed

☐ Adopted

☒ Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents**

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. Apartment Owners: Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75% *	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	—	<u>N/A</u>

\*The percentage for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. Developer:

☐ No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules

☒ Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

A summary of the reserved rights are as follows:

Par. 16.0. The Developer reserved the right to file an amendment as provided by Section 514A-12, Hawaii Revised Statutes and to correct errors to comply with State, Federal or local law.

### III. THE CONDOMINIUM PROJECT

A. **Interest to be Conveyed to Buyer:**

- ☒ Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- ☐ Leasehold or Subleasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit \_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_  
Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:     ☐ Monthly                             ☐ Quarterly  
                                 ☐ Semi-Automatically             ☐ Annually

Exhibit \_\_\_\_ contains a schedule of the lease rent for each apartment per ☐ Month    ☐ Year

**For Subleaseholds:**

- ☐ Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:

☐ Canceled                             ☐ Foreclosed

- ☐ As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- ☐ Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Subleasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit \_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_  
Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:     ☐ Monthly                             ☐ Quarterly  
                                 ☐ Semi-Automatically             ☐ Annually

Exhibit \_\_\_\_ contains a schedule of the lease rent for each apartment per ☐ Month    ☐ Year



☐ Other:

### **IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed period of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with fee simple owner of the land in order to develop the project. The developer may have then entered into an sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

#### **B. Underlying Land:**

Address: 6519 Anahulu Road, Hanalei, Kauai, Hawaii 96714

Tax Map Key (TMK): (4) 5-8-06-054

☐ Address ☒ TMK is expected to change because County of Kauai may assign new cpr numbers for each unit

Land Area: 12,237 ☒ square feet ☐ acre(s) ☒ Zoning: Open

Fee Owner: Brian J. Kennelly and Gavin D. Kennelly  
P. O. Box 92  
Hanalei, Kauai, Hawaii 96714

LESSOR NOT APPLICABLE

C. **Buildings and Other Improvements:**

1. ☒ New Building(s)  
☐ Conversion of Existing Building(s)  
☐ Both New Building(s) and Conversion
2. Number of Buildings: 2 Floors Per Building 2 for Unit 1  
1 for Unit 2  
☒ Exhibit A contains further explanations.
3. Principal Construction Material:  
☐ Concrete ☐ Hollow Tile ☒ Wood  
☒ Other CMU Post and other allied building materials.
4. Permitted Uses by Zoning:

	No of <u>Apts.</u>	<u>Use Permitted By Zoning</u>
<input checked="" type="checkbox"/> Residential	<u>1</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	<u>      </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	<u>      </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	<u>      </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	<u>      </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Ohana	<u>      </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Industrial	<u>      </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Agricultural	<u>      </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Recreational	<u>      </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: shade shed	<u>1</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?

☒ Yes ☐ No

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

[ ] Pets: \_\_\_\_\_  
 [ ] Number of Occupants: \_\_\_\_\_  
 [ ] Other: \_\_\_\_\_

[X] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
Unit 1	<u>1</u>	<u>2/2</u>	<u>1,047</u>	<u>200/600</u>	<u>deck/carport</u>
Unit 2	<u>1</u>	<u>0/0</u>		<u>16</u>	<u>shade shed</u>

Total Apartments: 2

**\*Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.**

**Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.**

Boundaries of Each Apartment:

The boundary of each unit is the exterior finished surfaces of the units' perimeter walls, roofs, foundations, windows and frames, doors, beams, post entries and cesspools, if any.

Permitted Alterations to Apartments:

Each unit owner may alter the structure and any other improvements located within their unit's limited common land area as provided in paragraphs 7.0 and 15.0 of the Declaration of Condominium Property Regime.

Apartments Designated for Owner-Occupant Only: **Not Applicable**

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer as N/A elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 4

		<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
		<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
	Unit 1:	2						
Assigned (total)	Unit 2:		2					4
(for each unit)								
Guest								
Unassigned								
Extra for								
Purchase								
Other:								
Total								
Covered & Open		4		0		0		4

Each apartment will have the exclusive use of at least 2 parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

Unit 1 has a carport for two (2) motor vehicles located beneath the house.

Unit 2 has sufficient limited common land area to park 2 cars

☐ Commercial parking garage permitted in condominium project.

☐ Exhibit \_\_\_\_\_ contain additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

☒ There are no recreational facilities

☐ Swimming pool

☐ Storage Area

☐ Recreation Area

☐ Laundry Area

☐ Tennis Court

☐ Trash Chute/Enclosure(s)

☐ Other: \_\_\_\_\_

9. Compliance with Building Code and Municipal Regulations; Cost to Cure Violations

☒ There are no violations.

☐ Violations will not be cured.

☐ Violations and cost to cure are listed below.

☐ Violations will be cured by \_\_\_\_\_

10. Conditions and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations  
(For conversions of residential apartments in existence for at least five years):

Not Applicable - All new construction

1. Conformance to Present Zoning Code

a. ☒ No variances to zoning code have been granted.

☐ Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>X</u>	<u>          </u>	<u>          </u>
Structures*	<u>X</u>	<u>          </u>	<u>          </u>
Lot	<u>X</u>	<u>          </u>	<u>          </u>

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

☒ described in Exhibit B.

☐ as follows:

2. Limited Common Elements: Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

☐ There are no limited common elements in this project.

☒ The limited common elements and the apartments which use them, as described in the Declaration, are:

☒ described in Exhibit B\*.

☐ as follows:

\*Note: Land areas referenced herein are not legally subdivided lots.

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest". It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

☐ described in Exhibit \_\_\_\_.

☒ as follows:

Unit 1	50%
Unit 2	<u>50%</u>
	100%

The common interest was determined by allocating an equal percentage to each unit.

- E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit C describes the encumbrances against the title contained in the title report dated March 6, 2006 and issued by Title Guaranty of Hawaii, Inc.

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specific sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[ ] There are no blanket liens affecting title to the individual apartments.

[X] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conveyance</b></u>
Mortgage	If the Developer defaults under the Mortgage, the lender may foreclose on the Project. If a foreclosure occurs, all deposits will be refunded to the prospective purchasers, less escrow cancellation fee.

F. Construction Warranties:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

## 1. Building and Other Improvements:

None. There are no warranties, express or implied.

## 2. Appliances:

None. There are no warranties, express or implied.

G. **Status of Construction and Date of Completion or Estimated Date of Completion:**

Both units were completed in November, 2005.

H. **Project Phases:**

The developer ☐ has ☒ has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):



#### IV. CONDOMINIUM MANAGEMENT

- A. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

☐ not affiliated with the Developer ☐ the Developer or the Developer's affiliate.  
☒ self-managed by the Association of Apartment Owners ☐ other \_\_\_\_\_

- B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, your apartment may be lien-ed and sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit n/a contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change)

See Page 20

- C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

☒ None\* ☐ Electricity (\_\_\_\_\_ Common Elements only \_\_\_\_\_ Common Elements & Apartments)  
☐ Gas\* (\_\_\_\_\_ Common Elements only \_\_\_\_\_ Common Elements & Apartments)  
☐ Water ☐ Sewer ☐ Television Cable  
☐ Other \_\_\_\_\_

\*Unit 1 is serviced by a septic wastewater system. If Unit 2 is improved with a dwelling, it will be required to hook up to and utilize the same septic system.

## V. MISCELLANEOUS

### A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

☐ Notice to Owner Occupants

☒ Specimen Sales Contract

Exhibit D contains a summary of the pertinent provisions of the sales contract.

☒ Escrow Agreement dated February 22, 2006

Exhibit E contains a summary of the pertinent provisions of the escrow agreement.

☐ Other \_\_\_\_\_

### B. Buyer's Right to Cancel Sales Contract:

#### 1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by a developer are binding if:

A) The Developer delivers to the buyer a copy of:

- 1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission;

**AND**

- 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;

B) The buyer is given an opportunity to read the report(s); **AND**

C) One of the following has occurred:

- 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
- 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
- 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

A) There is a material change in the project which directly, substantially and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**

B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Report issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any. (NONE)
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other: \_\_\_\_\_

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har).

This Public Report is part of Registration No. 5962 filed with the Real Estate Commission on March 23, 2006.

Reproduction of Report. When reproduced, this report must be on:

☐ yellow paper stock    ☒ white paper stock    ☐ pink paper stock

C. **Additional Information Not Covered Above**

**NOT A SUBDIVISION.** This is a condominium project which should not be confused with a subdivision. A purchaser of an apartment unit will be conveyed an apartment unit together with an "undivided" percentage interest in the common elements of the project. The entire parcel of land upon which the project is situated is designated as a common element. That portion of the common element which each purchaser has the exclusive right to use is called a limited common element or area, but is not a separate, legally subdivided lot.

**MAINTENANCE FEES.** Developer believes that there will be no maintenance fees. This is because all costs of every kind pertaining to each apartment and its respective limited common element, including but not limited to, cost of landscaping, maintenance, repair, replacement and improvement shall be borne entirely by the respective apartment owner. All utilities are separately metered. Based on the foregoing, there is no schedule of maintenance fees attached to this Public Report, except in the event Unit 2 has a dwelling in which case, the septic wastewater system will be a common element and a shared expense.

Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners to purchase fire insurance to cover the improvements of the Project, and that the premiums for the insurance be common expenses. Developer anticipates that the Association will elect to permit individual apartment owners to obtain and maintain separate policies of fire insurance and name the Association as an additional insured. In such case, fire insurance premiums will be the responsibility of individual apartment owners and not common expenses. Prospective purchasers should consult with their own insurance professionals to obtain an estimate for individual fire and hazard insurance.

**RESERVES.** Developer discloses that no reserve study was done in accordance with Section 514A-83.6, Hawaii Revised Statutes, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. No reserves are necessary because there are no common elements that require any type of replacement or major repair.

**DISCLOSURE RE: SELECTION OF REAL ESTATE BROKER.** One of the Developer(s), Brian D. Kennelly, as the owner will be representing themselves in the sale of the apartment.

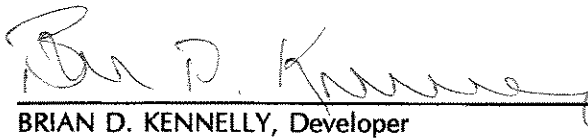
Pursuant to sections 16-99-3(g), Hawaii Administrative Rules ("HAR"), prospective purchaser are hereby advised that one of the Developer(s) Brian D. Kennelly, RB-13616 is a current and active Hawaii-licensed real estate broker. Pursuant to section 16-99-11(c), HAR, "(n)o licensee shall be allowed to advertise 'For Sale by Owner', 'For Rent by Owner', and 'For Exchange by Owner'.

**BEDROOMS.** Unit 1 may only have two (2) bedrooms and Unit 2 may have up to three (3) bedrooms. This is because the maximum capacity of the septic wastewater system is five (5) bedrooms.

- D. The developer declares subject to the penalties set forth in section 154A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A- 1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

BRIAN D. KENNELLY and GAVIN J. KENNELLY

Name of Developer

  
BRIAN D. KENNELLY, Developer

2/22/06  
Date

  
GAVIN J. KENNELLY, Developer

2/22/06  
Date

Distribution:

Department of Finance, County of Kauai  
Planning Department, County of Kauai

\*Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner; Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.

## EXHIBIT "A"

### Description of Apartments

a. Unit 1. Unit 1 consist of one freehold estate consisting of one two-story residential structure. This unit consists of a kitchen, living room, two bedrooms, two bathrooms, deck and a carport located below the structure. The net living area of this unit is approximately 1047 square feet, the deck is approximately 200 square feet and the carport is approximately 600 square feet. The unit is constructed principally of wood, other allied building materials, metal roofing, and concrete CMU post or concrete footing foundation. The land area surrounding Unit 1 as delineated and described in the Condominium Map is a limited common element for Unit 1 and is for the exclusive use of Unit 1; subject, however, to the common septic system and the absorption bed (easement "S-1") and easements "U-1" and "AU-1".

b. Unit 2 Unit 2 consists of one freehold estate consisting of one shade structure. The net area of the structure is approximately 16 square feet. Parking for at least two vehicles is available anywhere within the limited common land area. The land area surrounding Unit 2 as delineated and described in the Condominium Map is a limited common element for Unit 1 and is for the exclusive use of Unit 2; subject, however, to easements "U-1" and "AU-1".

Note: Unit 2 may have up to three (3) bedrooms per the Declaration.

## EXHIBIT "B"

### Common Elements

The common elements of the Project and which the units have immediate access to include:

a. The land in fee simple and any portion of easement AU-1 that is improved for driveway purposes, the improvements being a common element.

b. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, waste water system, septic system, septic tank, and any improvements, equipment and absorption fields or beds related thereto, drainage, hot and cold water and like utilities which services more than one unit and any easements for such utility services, if any. The approximate location of the septic system and absorption bed is contained within Easement "S-1".

c. The common easements for drainage and all common or shared installations for underground utilities including electricity, water, telephone, and cable television which run upon or under the common element and easement "AU-1", if any.

d. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project.

### Limited Common Elements.

The land area delineated and designated in the Condominium Map as limited common elements are limited common elements of a unit and consist of the following:

a. Unit 1. The land area surrounding and under Unit 1 is a limited common element of Unit 1 and is for the exclusive use of Unit 1 and consists of approximately 6,528 square feet; subject, however, easements "S-1" and "U-1".

b. Unit 2. The land area surrounding and under Unit 2 is a limited common element of Unit 2 and is for the exclusive use of Unit 2 and consists of approximately 5,709 square feet; subject, however, to easements "AU-1" and "U-1".

c. Any fences, walls or utility systems or lines which are located within the limited common land area and which services or benefits only one Unit shall be deemed a limited common element of such unit and in Easement "AU-1" for access and utility purposes.

## EXHIBIT "C"

### Encumbrances Against Title

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. Structure position discrepancies as shown on the survey map prepared by Ronald J. Wagner, Land Surveyor, with Wagner Engineering Services, Inc. dated March 10, 2004.
3. Encroachment(s) as shown on the survey map prepared by Ronald J. Wagner, Land Surveyor, with Wagner Engineering Services, Inc. dated March 10, 2004.
4. Mortgage dated March 26, 2004, in favor of Bank of Hawaii, a Hawaii corporation, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-065259.
5. The covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in the Declaration of Condominium Property Regime dated February 22, 2006, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2006-044624.
6. Condominium Map No. 4187, recorded in said Bureau, State of Hawaii.
7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the By-Laws of the Association Apartment Owners dated February 22, 2006 recorded as Document No. 2006-044625.
8. For real property taxes, your attention is directed to the Director of Finance, County of Kauai.



## EXHIBIT "D"

### Summary of Sales Contract

The Sales Contract contains the purchase price, description and location of the apartment and other terms and conditions under which a Purchaser will agree to buy an apartment in the Project.

Among other things, the Sales Contract:

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how Purchaser will pay the purchase price.
2. Identifies the escrow agent and states that purchaser's deposit will be held in escrow until the Sales Contract is closed or canceled.
3. Requires that Purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
4. Permits the Developer without the consent or approval of a purchaser to modify the Declaration, By-Laws Condominium Map or other documents provided that purchaser may cancel the Sales Contract and obtain a refund if such modification:
  - a. substantially and materially impairs the use and enjoyment of the apartment;
  - b. substantially and materially alters the arrangement of the rooms or usable space of an apartment or building;
  - c. renders unenforceable a purchasers' loan commitment;
  - d. increases the purchaser's share of common expenses or maintenance fees;
  - e. reduces the obligations of Developer of common expenses on unsold apartments.
5. Provides that the Developer is selling the apartments in "AS-IS WHERE-IS" condition. This means that the Developer is not making any warranties or representations with respect to the apartments and Project.
6. If purchaser dies (any one of them) prior to closing, Developer has the right to return purchaser's funds, less any escrow cancellation fees and cost, and cancel the Sales Contract.

7. Provides that the closing cost shall be paid as follows:

a. By purchaser: title insurance, drafting of any note and mortgage, purchaser notary fees, recording fees, one half of escrow fees, and also a start fee for common expenses, if any.

b. By Developer: drafting of apartment deed and Developer notary fees, conveyance taxes, preliminary title report, and one half of escrow fees.

8. Provides the following remedies, in the event of default under the Sales Contract:

by purchaser:

- a. Developer may bring an action against purchaser for breach of contract;
- b. Developer may retain initial deposit;
- c. Purchaser shall be responsible for expenses incurred.

by Developer:

- a. Purchaser may bring an action against Developer for breach of Contract;
- b. Purchaser may bring an action compelling Developer to perform under contract;
- c. Developer shall be responsible for expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

9. Provides that purchaser may not assign his/her interest in the Sales Contract without the prior written consent of Developer.

10. Claims Against Contractor. The following is provided by Hawaii law which Purchaser has reviewed and accepts:

"Chapter 672E of the Hawaii Revised Statutes contains important requirements you must follow before you may file a lawsuit or other action for defective construction against the contractor who designed, repaired, or constructed your home or facility. Ninety days before you file your lawsuit or other action, you must serve on the contractor a written notice of any construction conditions you allege are defective. Under the law, a contractor has the opportunity to make an offer to repair and/or pay for the defects. You are not obligated to accept any offer made by a contractor.

There are strict deadlines and procedures under the law, and failure to follow them may negatively affect your ability to file a lawsuit or other action.”

The Sales Contract contains various other provisions which purchaser should become acquainted with. If there is any conflict between the terms of this summary and the Sales Contract, the latter shall control.

## EXHIBIT "E"

### Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by a neutral party ("Escrow"). Escrow is TITLE GUARANTY ESCROW SERVICES, INC. Under the Escrow Agreement dated February 21, 2006, these things will or may happen:

(a) Developer or Escrow will let purchasers know when payments are due and all monies received from a purchaser will be deposited in Escrow. Any interest earned on the deposits will belong to Developer.

(b) Escrow will arrange for purchasers to sign all necessary documents.

(c) The Escrow Agreement specifies when purchaser funds may be disbursed upon closing of a sale. The conditions include:

i) Escrow receives the purchasers' signed "Receipt for Public Report(s) and Notice of Right to Cancel";

ii) Escrow receives a certification from the Developer that the Sales Contract is effective and that the rescission right requirements in favor of purchasers have been complied with by the Developer; and

iii) The apartment deed conveying the unit to the purchaser has been recorded in the Bureau of Conveyances.

(d) The Escrow Agreement says under what conditions a refund will be made to a purchaser. Refunds can occur under the following situations:

i) If Purchaser elects to cancel the transaction in accordance with the "Receipt for the Final Public Report and Notice of Right to Cancel". The Receipt provides that purchasers may cancel the Sales Contract and purchaser is the Receipt is mailed or sent by telegram to Developer before (1) the apartment unit is conveyed to purchaser or (2) midnight of the 30th day after delivery of the Public Report(s) to me, whichever is earlier.

ii) The Developer and purchaser agree to terminate the Sales Contract;

iii) if the Developer exercises any right to cancel the transaction which it may have reserved.

NOTE: If a transaction is cancelled, the purchaser must return all documents to the Developer.

(e) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract. If a purchaser defaults, all deposits previously placed into Escrow will be forfeited by purchaser and Escrow may release such funds to Developer. See paragraph 11 of Escrow Agreement.

NOTE: Section 514A-63, Hawaii Revised Statutes, provides rescission rights to a purchaser under a binding contract if there is a material change in the project which directly, substantially and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project for such purchaser's use.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted. If there is any conflict between the terms of this summary and the Escrow Agreement, the latter shall control.

EXHIBIT "F"

ANANALU  
SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

THAT I, \_\_\_\_\_, whose address is \_\_\_\_\_, have made, constituted and appointed and by this act and these presents, do make, constitute and appoint as my agent \_\_\_\_\_, whose address is \_\_\_\_\_, and their successor in interest to the grantee of unit \_\_\_\_\_ in the ANANALU condominium project, TMK (4) 5-8-06-054, my true and lawful attorney with full power to act in my stead and in my behalf, to make and do the following, to wit:

To apply for and obtain a building permit for a single family dwelling located at Unit No. \_\_\_\_\_, \_\_\_\_\_, TMK No. (4) 5-8-06-054, which is further described in Exhibit "A", upon such terms and conditions as my attorney shall think fit; to execute any and all applications, certificates, receipts, grants of easements, licenses, and similar instruments necessary for obtaining any utility service, and other documents or instruments necessary or convenient for such purposes, including any other documents or agreements that may be required by any governmental authority over the issuance of building permits or utility service provider

The power of our attorney to act in accordance with the foregoing shall not be affected by any disability or incapacity suffered by me subsequent to my execution of this instrument. All acts done by my attorney pursuant to this power during any period of disability or incompetency shall have the same effect and inure to the benefit of and bind me, my heirs, devisees and personal representatives as if I were alive, competent and not disabled.

GIVING AND GRANTING to my said Attorney full power and authority as set forth above, to do and perform any and all acts and deeds as aforesaid as I might or could do if personally present, the powers enumerated above being in said of the special powers herein granted and not in limitation thereof; and hereby ratifying all that my said Attorney shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set our hands this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

STATE OF HAWAII )  
 ) ss.  
ISLAND AND COUNTY OF KAUAI )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: